Foreword

The Rt. Hon. Lord Denning

My friends at the University of Buckingham have decided to launch a law journal. They are fortunate in that Lord Scarman has agreed to be Chairman of the Editorial Advisory Board. But I am most embarrassed that they should have called it the *Denning Law Journal.* I cannot think why, except that my judgments have often given rise to controversy and given the commentators something to write about.

But I appreciate the compliment and would congratulate the University on its enterprise. It is of the first importance that there should be free and open discussion of the issues of the day. The members of this free and independent University – self-supporting as it is – are well placed to take the lead in these discussions. They will choose subjects of contemporary and practical importance. They will seek contributions from those in the law schools of other universities and also in the practising side of the legal profession. I trust it will be well supported.

I have often been asked: Which was your most important judgment? I would put it as *Candler* v. *Crane, Christmas*[1] where I ventured, in a dissenting opinion, to extend the scope of negligence so as to cover economic loss caused by negligent advice. That view was accepted and adopted 13 years later by the House of Lords in *Hedley Byrne* v. *Heller.*[2]

Next, I would put *Rex* v. *Northumberland Compensation Appeal Tribunal, Ex parte Shaw*[3] where we extended the remedy by prerogative writs to cover, not only excess of jurisdiction by a tribunal, but also error of law. To which I would add *Barnard* v. *National Dock Labour Board*[4] where we extended the remedy by declaration so as to make it available when a tribunal acted contrary to natural justice or made a mistake of law. These decisions paved the way for the explosive expansion of judicial review which culminated in *O'Reilly* v. *Mackman.*[5] I there traced its history and I like to think that it was of help to Lord Diplock in his most important speech in the House of Lords.

1. [1951] 2 K.B.164.
2. [1964] A.C.465.
3. [1952] 1 K.B.338.
4. [1953] 2 Q.B.18.
5. [1983] 2 A.C.237.

Then there are the cases on exception clauses. These go back to my junior days when I induced the Court of Appeal to uphold a most unrighteous clause in *L'Estrange* v. *Graucob*.[6] But when I was on the Bench, we managed to introduce the doctrine of fundamental breach. It started in *Karsales (Harrow)* v. *Wallis*.[7] A company could not rely on a printed exception clause if it was itself guilty of a breach going to the root of the contract. Although that doctrine was afterwards repudiated by the House of Lords, we managed in due course to revive it in a new guise. A company could not rely on a printed exception clause unless it was fair and reasonable. That was in *Geo. Mitchell Ltd.* v. *Finney Lock Seeds*[8] which was affirmed by the House of Lords,[9] where Lord Diplock referred to my contribution to the common law in terms which make me blush with embarrassment but which I treasure beyond measure.

Then of course there is the *Mareva* injunction which I regard as my most important contribution to commercial law. We there granted injunctions to prevent debtors making away with their assets so as to defeat creditors. This involved our departing from the law of the 19th Century. We did it in two interlocutory cases straight off the reel, *Nippon Yusen Kaisha* v. *Karageorgis*[10] and *Mareva* v. *International Bulkcarriers*:[11] but elaborated in a reserved judgment in *The Pertamina*.[12] Although the House of Lords threw cold water on it in *The Siskina*,[13] the *Mareva* survived and was given statutory force.

I suppose I should mention the *High Trees* case.[14] It was not a reserved judgment. I decided it at first instance straightaway at the end of the argument. Its importance was in getting rid of the old notion that estoppels were confined to representations of fact and did not extend to representations as to the future. It brought in a new species of estoppel called promissory estoppel. Many were the doubts cast upon it, notably by the House of Lords, but it became and is well established.

Then there are the cases in family law, in which I sought to bring the law into line with the social changes in the status of women. In *Bendall* v. *McWhirter*[15] we invented the deserted wife's equity – only to be reversed later by the House of Lords – and afterwards restored by statute. In *Rimmer* v. *Rimmer*[16] we gave the working wife a half-share in the matrimonial home: and were never reversed.

6. [1934] 2 K.B.394.
7. [1956] 1 W.L.R.936.
8. [1983] 1 Q.B.285.
9. [1983] 2 A.C.803.
10. [1975] 1 W.L.R.1093.
11. [1975] 2 LL.L.R.509.
12. [1978] Q.B.644.
13. [1979] A.C.210.
14. [1947] K.B.130.
15. [1952] 2 Q.B.466.
16. [1953] 1 Q.B.63.

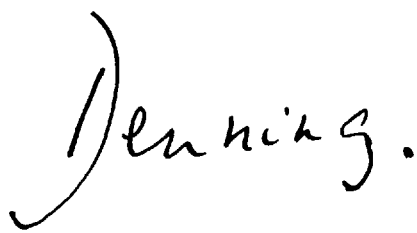
Then there were excursions into international law. My first case in the House of Lords was *Rahimtoola* v. *Nizam of Hyderabad.*[17] I took more pains over it than any other case – only to be scourged by Lord Simonds and the other Law Lords. Yet in the end we won. In the *Trendtex* case we did away with the absolute theory of state immunity and replaced it by the restrictive theory.

Outside the courts, I found the Profumo Inquiry the most interesting and important of my cases. My Report[19] was a best-seller, but the Crown said it was their copyright. They took all the royalties!

Since my retirement, I have spoken in the House of Lords on legal subjects: such as abortion, diplomatic immunity, terrorism, police powers, judicial review, telephone-tapping, kerb-crawling, test-tube babies, surrogate motherhood, and pay rises. All these may be thought fit for discussion in the pages of this *Journal.* Our legislators would welcome all the help they can get.

So I could go on. You will see why I enjoyed the Court of Appeal best. It is the linchpin of the law of England. It is the court which lays down the law finally in most cases. Very few go to the House of Lords.

I end with all best wishes for the success of this *Journal.*



17. [1958] A.C.379.
18. [1977] Q.B.529.
19. Cmnd. 2152 of 1963.